BEFORE THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

Referred Case No. 7 of 1903-04.

Petitioners. { 1. Subbaiya, patel.
{ 2. Venkataramaiya, shanbhog of Jodi Devarayasamudra village, Mulbagal Taluk

Subject.

Claim for enhancement of their remuneration in accordance with the scale fixed for Government villages.

Facts of the case.

In May 1903 the petitioners complained to Government of the inadequate remuneration fixed by the jodidars for their services as patel and shanbhog respectively of the said jodi village and prayed for the enhancement of the remuneration as per scale in Government villages. After some correspondence the Deputy Commissioner, in his letter No. 1114, dated the 27th February 1904, to the Revenue Commissioner, reported that the village was a large one and that the remuneration of Rs. 30 now fixed for the patel by the jodidars was inadequate and recommended that, as a special case, the jodidars might be compelled to pay the same percentage of remuneration to the patel as in Government villages. The Revenue Commissioner, in forwarding the above letter for the orders of Government, observes that he does not see his way to approve of the Deputy Commissioner's recommendation on the ground that as the jodi village has not undergone a detailed survey and settlement, he is aware of no orders justifying such interference by Government.

Decision.

The petitioners are the patel and shanbhog respectively of an unsettled jodi village. They are not entitled to ask Government to compel the jodidars to pay them remuneration at the rates fixed for settled villages. That being so, they have no case at all. Their petition are accordingly rejected.

No. R. 2368—Mis. 273-03-7, dated Bangalore, 15th September 1904.

Copy of the above is forwarded to the Revenue Commissioner in Mysore, together with the original papers received with his letters Nos. 7894 and 8257, dated the 8th June and the 17th June 1904, respectively.

Appeal No. 121 of 1903-04.

Appellant		*Respondent*
Naranappa	*Versus*	Seshappa.

Subject.

Appeal against the decree of the Deputy Commissioner of the Bangalore District, dismissing the appellant's suit for the registry of his name as shanbhog of the Virupakshipura village in the Channapatna Taluk, on the ground that he was illiterate and hence debarred from being appointed.

Facts of the case.

Banaiya and after him, his eldest son Surappa were the registered shanbhogs of the village in question. The latter was succeeded by his son, Subbaiya, who, it is said, was not attending to the duties himself and that Narahappa and after him his brother Seshappa the respondent, both sons of Bhaskaraiya, the third son of Banaiya, looked after the duties as gumastas of Subbaiya. In 1887, the respondent was removed from the office of gumasta on account of certain irregularities, and the appellant who is the son of Subbaiya was permitted to look after the work which he conducted till 1892, with the help of a gumasta, being himself illiterate knowing only how to sign his name. As it was, however, found necessary in the public interests, to appoint a competent person for the office instead of the appellant, correspondence ensued, of which respondent took advantage and tried to be re-instated as gumasta, but the Sub-Division Officer in May 1893 declined to allow him to do the work having been dismissed previously. The Deputy Commissioner affirmed this order. On the appeal of the respondent, the Government in their Proceedings No. 24773—P. 1911, dated the 25th June 1895, ordered that if the registered shanbhog (Subbaiya) was unable to discharge the duties himself and his son the appellant was disqualified to hold the office, the Deputy Commissioner should appoint the next heir-in-law competent to hold the office, taking into consideration also the claim of the respondent set upon the score of his belonging to the family of the barawarddar shanbhog Subbaiya. The Sub-Division Officer thereupon recommended the appointment of the respondent to the shanbhogi in question on the ground that the barawarddar shanbhog was old and his son the appellant was illiterate and the Deputy Commissioner approved of it in June 1896. The appellant thereupon filed a regular suit for the registry of the shanbhogi office in his name. Both the

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Assistant Commissioner and the Deputy Commissioner rejected the suit on the ground that he was illiterate and hence unfit to hold the office. Hence the present appeal to Government.

The appellant urged at the time of hearing that he had an adopted son and the Deputy Commissioner with his report dated the 12th August 1904, submits the finding of the Assistant Commissioner that the appellant has an adopted son, Seshappa, now a minor.

Decision.

The office in question belonged to Banaiya's eldest son Surappa, from whom it descended to his son Subbaiya. Owing to the latter being illiterate his uncle's son Seshappa the respondent was doing the duties of the office for a few years. Seshappa was removed from the gumastaship in 1887 on account of certain irregularities and Subbaiya's son the appellant was allowed to look after the duties which he did with the help of a gumasta. Subbaiya having subsequently died, his son Naranappa, the appellant, now claims the office. The respondent opposes the claim chiefly on the strength of the Government order of the 25th June 1895. But that order did not amount to a condonation of his past shortcomings or a declaration of his title or eligibility. It would appear that the appellant Naranappa is illiterate. He cannot therefore be appointed to the office. That disqualification does not however extend to his legal heirs as well. It has been found on overwhelming evidence of reliable character, both oral and documentary, that the appellant has a minor adopted son named Seshappa aged thirteen years. Government do not see how this lad can be postponed to the respondent. Under these circumstances, the Deputy Commissioner's order is reversed and minor Seshappa appointed to the office. A competent gumasta should be appointed in trust for him during his minority.

No. R. 2668—*Mis.* 265-03-11, *dated Bangalore, 24th September* 1904.

Copy of the above is forwarded to the Deputy Commissioner, Bangalore District, together with the vernacular records received with his letter No. 113, dated the 12th August 1904.

Appeal No. 14 *of* 1903-04.

Appellants		*Respondents*
Sitaramaiya and sixteen other vrittidars of Gonibid Agrahar, Mudgere Taluk	*Versus.*	1. Kasaiya (patel). 2. Ramanna (shanbhog) (also vrittidars).

Subject.

Appeal against the order of the Deputy Commissioner of the Kadur District, declining to set aside the sale of the entire Gonibid Agrahar in the Mudgere Taluk, held for arrears of jodi due by some of the vrittidars of the said Agrahar.

The facts of the case appear sufficiently from the following :—

Decision.

The Agrahar in question consists of forty-nine vrittis. To the Inam title-deed relating to it is attached a schedule showing the distribution of the vrittis and the amount of quit-rent payable by each of the vrittidars. The respondents admit that the lands too have, for the most part, been divided between the vrittidars concerned. On certain previous occasions the vrittis of the defaulting vrittidars were separately proceeded against for the arrears due by them. The Baki pattis, khate and other papers in the file show that there has never been any doubt in regard to the severality of the liabilities of the vrittidars. On the present occasion some of the vrittidars requested that in accordance with precedent, proceedings be taken only against the shares of the persons who had fallen into arrear. This request was, however, refused and the whole Agrahar sold "*en bloc.*" There was a paucity of bidders and the respondents who are themselves two of the vrittidars purchased the Agrahar for much below its estimated value. Hence this appeal by some of the other vrittidars prejudicially affected by the sale. This, in the opinion of Government, is a case in which "the shares have already been separately registered as vrittis." It therefore falls under the latter portion of clause (*c*) of Rule 99 of the Land Revenue Rules, even should there be any doubt as to its coming within the purview of the first portion of it. The shares of the defaulters should have been first sold as laid down in that rule. The sale of the entire Agrahar was opposed to rules and cannot be upheld. In reversal of the Deputy Commissioner's order that sale is set aside and fresh action directed to be taken in accordance with law.

No. R. 2719—*Mis.* 117-03-16, *dated Bangalore, 24th September* 1904.

Copy of the above is forwarded to the Deputy Commissioner of the Kadur District, together with the vernacular records received with his letter Nos. 460, 468 and 59, dated the 4th April, the 8th April and the 3rd August 1904, respectively.

Appeal No. 161 *of* 1903-04.

Appellant		*Respondents*
Kaveramma	*Versus*	1. Venkatalakshmamma. 2. Venkatasubbaiya.

Subject.

Claim to the shanbhogi office of Hosaholalu, Krishnarajpete Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

Ramaiya, the registered shanbhog of the Hosaholalu village, died in 1877 without issue. His widow Kaveramma is the present appellant. Subramannaiya, Ramaiya's cousin (uncle's son) succeeded to the office but was dismissed in 1884. The appellant was appointed in his place in 1887. It was subsequently brought to notice that she had by her bad character become an outcaste and the Deputy Commissioner held that she had in consequence forfeited the hak to the shanbhogi office and he accordingly removed her name from the baraward. Rule XLIII of the Land Revenue Rules of 1890, relied upon by the Deputy Commissioner, is not applicable to the case in question inasmuch as her bad character at the time of succession disqualifies a hereditary claimant but not such subsequent conduct as is now attributed to the appellant. The order of the Deputy Commissioner is therefore reversed and Government direct that Kaveramma's name be registered to the shanbhogi office and she be given an opportunity of appointing a competent gumasta to look after the duties. In default the Deputy Commissioner will make a suitable appointment of a gumasta.

No. R. 2777—*Mis.* 40-03-9, *dated Bangalore,* 26*th September* 1904.

Copy of the above is forwarded to the Deputy Commissioner, Mysore District, together with the vernacular records received with his letter No. 706, dated the 9th June 1904.

Appeal No. 157 *of* 1903-04.

Appellant		*Respondent*
Narasappa	*Versus*	Kiritaiya.

Subject.

Appeal against the order of the Deputy Commissioner of the Bangalore District, declining to recognize the appellant's claim to the shanbhogi office of Challaghatta and Konana Agrahar in the Bangalore Taluk.

Facts of the case.

Atchappa, the paternal grand-father of the respondent, was the last registered holder of the office. In July 1874, he prayed that as he was very old and as his sons were incompetent to perform the duties, his daughter's son, the appellant, might be appointed his gumasta, and subsequently prayed further that the office itself might be registered in the name of the appellant. On the 6th October 1874 the Deputy Commissioner ordered that the registry as it stood should not be altered, that the appellant might be appointed gumasta, and that after Atchappa's death the registry might be transferred to the names of his sons or those of his sons' sons. The registerdar Atchappa died in October 1896; and the appellant, the respondent's father Ramaiya and Savitramma, widow of the appellant's uncle, claimed the office, the first under a will alleged to have been executed by the deceased registerdar and the other two by right of succession. The Divisional Officer held that under law as well as under the order of the Deputy Commissioner, dated the 6th October 1874, the respondent, who was competent to discharge the duties, had the best claims to the office and directed the registry in his name. On appeal, the Deputy Commissioner upheld the Divisional Officer's order. Hence the present appeal.

Decision.

Under the orders of the 6th October 1874, the appellant was distinctly made to understand that he was nothing more than Atchappa's gumasta, and that on the latter's death the office would go to one of his sons or sons' sons if found competent. That being so, the appellant's contention that he is entitled to hold the office as against the respondent is clearly unsustainable. The office being inalienable, the will relied on by him cannot help him in any way. The Deputy Commissioner's order is correct and must be affirmed. The appeal is dismissed.

No. R. 2869—*Mis.* 278-03-4, *dated Bangalore,* 28*th September* 1904.

Copy of the above is forwarded to the Deputy Commissioner of the Bangalore District, together with the records received with his letter No. 996, dated the 2nd June 1904.

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Appeal No. 7 of 1904-05.

Appellant		*Respondent*
Venkataramaiya	*Versus*	Puttamma *alias* Lakshamma

Subject.

Appeal against the order of the Deputy Commissioner of the Mysore District, dismissing the claim of the appellant to the shanbhogi office of one of the two circles of Mandakalli and Kuppalur, Mysore Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

Venkataramanaiya, the registered shanbhog of Mandakalli firka, was dismissed in 1898 on account of incompetency and certain irregularities which he committed in connection with the discharge of his duties, but before he was relieved of his charge he was prosecuted and convicted for criminal breach of trust. Subsequently he is reported to have died. In succession to him the respondent's (his widow) name was registered for the office. Though no express order on the latter point is forthcoming in the file, her appointment was recognised by the local authorities and two gumastas in her brothers were appointed to look after the work of the two firkas, *viz.*, Mandakalli and Kuppalur, into which the original Mandakalli circle was split up during the Potgi Settlement. Appellant is the paternal uncle of the deceased baravarddar and has been acting as gumasta off and on during the minority of his late nephew. He now claims the office as being the nearest surviving male member of the family and also on the ground that the deceased's family has forfeited the hak to the office on account of his conviction for criminal breach of trust. In the view that the offence committed by the deceased is not of a serious nature though technically called criminal breach of trust and that it occurred in a firka other than the one in which he was officiating and after his dismissal, the Government consider that the most equitable and fair arrangement would be to grant a firka to each of the parties without depriving the deceased's family wholly of the hak, and accordingly order the confirmation of the respondent as the registered baravarddar of the Mandakalli firka and the appointment of the appellant as shanbhog of the Kuppalur firka.

No. R. 3666—*Mis.* 216-03-4, *dated Bangalore, 26th October* 1904.

Copy of the above is forwarded to the Revenue Commissioner in Mysore, together with the records received with his letter No. 304, dated the 13th July 1904.

Appeal No. 5 of 1904-05.

Appellant		*Respondent*
Urigowda	*Versus*	Eramma.

Subject.

Claim to the pateli office of Kollangi in the Arkalgud Taluk.

Facts of the case.

The respondent was registered as patel in succession to her husband in 1898. The claim preferred by the appellant thereupon on the ground of his father having been the joint patel of the said village prior to 1879 was finally rejected by Government in Appeal No. 34 of 98-99 after hearing both parties. Thereupon the appellant brought a regular suit to recover the office. The Assistant Commissioner who tried the case dismissed the suit as barred by the Law of Limitation. On appeal the Deputy Commissioner recognised the appellant's right to the office and directed the registry of his name as a hakdar, but held that he was not entitled to possession before the death of the respondent (a sonless widow). From this order the appellant appeals to Government.

Order.

The decision passed by the Government in Appeal No. 34 of 1898-99 was a final pronouncement in favor of the respondent and is not open to revision in a regular suit. On this ground Government hold that the present claim is unsustainable. The appeal is therefore dismissed. In this view Government do not consider it necessary to go into other points raised in the pleadings.

No. R. 3922—*Mis.* 291-03-4, *dated Bangalore, 5th November* 1904.

Copy of the above is forwarded to the Deputy Commissioner of the Hassan District, together with the records received with his letter No. 30, dated the 21st July 1904.

Appeal No. 15 *of* 1904-05.

Appellant	*Versus*	Respondent
Girianna, son of Ramaiya		Girianna, son of Puttasimmaiya.

Subject.

Appeal against the order of the Deputy Commissioner of the Hassan District, declining to appoint the appellant as shanbhog of either of the Belagumba and Adihalli firkas in the Arsikere Taluk and referring him to a regular suit to establish his hak.

The facts of the case appear sufficiently from the following :—

Decision.

The appellant and respondent represent respectively the elder and younger branches of a family, the members of which have, for a considerable time past, held the office of shanbhog of Belagumba and Adihalli Circles in hereditary succession. The appellant's father Ramaiya held charge of both the circles until the year 1853, when in pursuance of a family arrangement, he transferred Adihalli to the respondent's father, Puttasimmaiya, and retained the other for himself. Ramaiya continued to be in possession of Belagumba until 1859, when he was dismissed on suspicion of having connived at certain individuals enjoying, on Bengar tenure for some years and until the refusal by them of an illegal gratification demanded from them by his brother, a piece of land in respect of which adequate irrigation facilities were forthcoming and which therefore ought long since to have been charged with wet assessment. That no deprivation of the family, of its right to the office thus vacated by Ramaiya, was intended, is evident from the fact that the nomination of a competent *varasdar* of Ramaiya's was called for, that Puttasimmaiya was nominated accordingly by the Amildar of the Taluk and appointed by the Superintendent of the Division, and that in answer, to a subsequent representation made by a brother of Ramaiya, *viz.*, Venkataramaiya *alias* Venkatappa, who was unconnected with the transaction which had culminated in Ramaiya's removal, an order was made that since one of the hakdars had been appointed to the shanbhogi, the petitioner had no real grievance. Puttasimmaiya held charge of both Belagumba and Adihalli for some time and then died. His son, the respondent, succeeded him and somehow, though in a most unsatisfactory manner, managed until 1897 to look after the duties of both the circles in addition to those of another (Tirupati) which he seems to have come by otherwise than by inheritance from a paternal ancestor. In the year abovementioned, *i.e.*, 1897, the respondent was called upon to suggest suitable arrangements, conformably to rules and standing orders, for the proper performance of the duties of shanbhog of Belagumba and Adihalli. In response to that requisition, he named certain gumastas. At the same time, however, the appellant asked for the recognition of his own title by his appointment to one of the circles. The respondent repudiated the appellant's claim which nevertheless was supported by the Amildar who, on grounds which appear untenable, was overruled by the Assistant Commissioner and the Deputy Commissioner, both of whom concurred in holding that, owing to the long absence of possession on his part, the appellant's only remedy lay in a regular suit in which he should seek to establish his hak. Dissatisfied with this order the appellant has preferred the present appeal.

2. Government have heard both the parties and given the case their best consideration with the result that the materials before them are sufficiently ample to enable them to arrive at a satisfactory decision, and that no useful object would be gained by the appellant being relegated to a formal suit.

3. The rules do not contemplate a permanent forfeiture of hereditary hak in such cases. The arrangements made in 1859 shows that nothing more than the removal of the delinquent Ramaiya without prejudice to his succession by his heirs was intended. There was no adverse possession in spite of long enjoyment until 1897-98 when for the first time the respondent asserted his sole title to the exclusion of Ramaiya's son and heir, the appellant, who till then had no reason to apprehend, much less to know, that his hak was in jeopardy. It is significant that his father Ramaiya's name as also his own name continued to be borne in the registers for several years after Ramaiya's dismissal and even demise The appellant was moreover a minor until a few years before the date of the proceedings which have led up to this appeal. In a matter of this kind, the rigid rules of limitation should not be strictly applied unless hostile enjoyment is proved beyond all reasonable doubt. There is further the fact that the respondent is under the Potgi Rules unfit to hold more charges than one and that for the surplus charge "one or more new officiators will be appointed by the Government. The new officiator or officiators will be appointed from the family in which the hak has been hitherto vested if a competent person can be found."

4. Government are accordingly of opinion that the appellant is not debarred from advancing his claim to one of the two circles under advertence. They are at the same time quite willing that the choice should be given to the respondent in consideration of his long possession. The record shows that the potgi attached to Belagumba is Rs. 75-4-0 while that attached to Adihalli is Rs. 85-8-0. At the hearing, the respondent declined to exercise his choice, his only contention being that he was himself entitled to both the circles and that the appellant could claim neither. In these circumstances, Government direct that the less

remunerative of the two circles, *viz.*, Belagumba, be registered in the appellant's name and put in his possession unless the respondent in his own interests elects to retain that circle and to give up Adihalli to the appellant, in which latter case the respondent's wishes may be given effect to.

No. R. 4612—*Mis.* 230-03-4, *dated Bangalore, 26th November* 1904.

Copy of the above is forwarded to the Deputy Commissioner of the Hassan District together with the vernacular records received with his letter No. 78, dated the 6th August 1904.

Appeal No. 19 of 1904-05.

Appellants	*Versus*	Respondent
1. Ramaiya 2. Venkatramaiya		Venkatappa

Subject.

Appeal against the decree of the Deputy Commissioner of the Tumkur District, disallowing the claim of the appellants to the shanbhogi office of the Honnavalli firka in the Tiptur Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

This is a claim for a shanbhogi office. One Shamia and Venkatappa jointly held it for some time. The names of both of them were entered in the Register of 1861, Shamia being shown as officiator. In 1863-64 Shamia tried, without success, to have Venkatappa's name removed from the Register. Under the Superintendent's order dated the 31st August 1864, the registry continued in the names of both Shamia and Venkatappa. On Shamia's death in 1879, Venkatappa's son Suryanaranappa claimed the office, but the Deputy Commissioner held in 1883 that that claim could not be admitted so long as Shamia's widow Lingamma was alive and he directed that the latter's name be registered accordingly. On Lingamma's demise in 1897, Suryanaranappa's son, the respondent, claimed the office, but the Deputy Commissioner rejected the claim and gave the office to the first daughter of Shamia and Lingamma, namely, Thimmamma. The respondent, not satisfied with this order, instituted a regular suit which was decreed in his favor by Assistant Commissioner, Mr. Subramanya Iyer, whose decision was modified in appeal by the Deputy Commissioner who held that the respondent could only succeed to the office on the death of Timmamma. The respondent appealed to Government with the result that they held that as a joint holder he was entitled to be inducted into the office in preference to Shamia's heirs, other than male. The plaintiffs (sons of Thimmamma and her sister), who were not parties to that suit, instituted a fresh suit asserting that the respondent had no right to the office and that they were entitled to succeed to it in preference to the respondent. The Assistant Commissioner, Mr. Paramasiva Iyer, decreed the claim, but the Deputy Commissioner, on appeal, rejected it. The plaintiffs preferred an appeal to Government who remanded the case to the Deputy Commissioner for a decision *de novo*, with certain observations. The Deputy Commissioner again went into the case and affirmed his original decision. Hence the appeal. Government have given the case the best consideration and are of opinion that the appeal is not entitled to prevail. The bestowal of the office first on Shamia's widow Lingamma and then on his daughter Thimmamma was a mistake, and Government hold that this mistake should not be perpetuated by the appointment of Thimmamma's or her sister's son in preference to joint hakdar Venkatappa's grand-son in the male line—to wit the respondent. That Venkatappa was a hakdar has been established beyond all reasonable doubt and there is no reason why his descendants in the male line should be superseded by his co-sharer's descendants in the female line. That being so, it is clear that the appeal cannot prevail.

The appeal is accordingly rejected.

No. R. 6327—*Mis.* 317-03-04, *dated Bangalore, 20th January* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his letter No. 75, dated the 2nd August 1904.

Appeal No. 63 *of* 1904-05.

Appellant		Respondent
Gurappa *bin* Rangappa	*Versus*	Subramanya Sastri

Subject.

Appeal against the order of the Deputy Commissioner of the Shimoga District, declining to set aside the sale of Survey No. 42 of Kannekoppa village in the Shimoga Taluk, held for arrears of revenue.

Facts of the case.

On account of the arrears of kandayam due for the year 1902-03, the land in question in the khate of the appellant was proceeded against and sold to the respondent for Rs. 14-8-0, at a sale held by the shekdar on the 21st May 1903. The appellant tendered the full arrear on the date of sale (it is alleged before 4 P. M.) but the shekdar refused its acceptance on the

ground that the sale had already been closed. The records also show that the sale did not take place at the spot indicated in the sale notification, but was held in a hut a little distance from the village, on account of heavy rain and the consequent impossibility of holding it near the land. The sale in question is reported to have been closed earlier than usual owing to the shekdar having to attend to two or three other sales on the same day. The appellant thereupon tendered the amount to the Amildar, who held it in deposit and recommended the cancellation of the sale on the grounds that the plea urged by the appellant for non-payment of the arrear in time appeared reasonable and that the land was worth Rs. 300. The Assistant Commissioner, however, confirmed the sale on the ground that the sale had been regularly held, and the Deputy Commissioner affirmed the order on appeal. Hence this second appeal to Government.

Decision.

This is a case in which the Government feel called upon to interfere. The sale was not held in the place named in the notification. The defaulter after some pains traced the sale-conducting officer to a hut outside the village and tendered to him the arrears due, but that officer declined to accept the same on the ground that the sale had already been closed. The sale was not conducted in the proper place, and it was closed before the usual business hours. The tender was refused on insufficient grounds. The proceeds realized at the sale were wholly out of proportion to the value of the property, the former being Rs. 14-8-0 and the latter Rs. 300. It is clear that the land was worth a great deal more than the pecuniary limits of the shekdar's jurisdiction. On these grounds the Deputy Commissioner's order is reversed and the sale complained of set aside.

No. R. 7332—*Mis.* 224-04-4, *dated Bangalore,* 18*th February* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Shimoga District, together with the vernacular records received with his letter No. 416—279, dated the 15th November 1904.

Appeal No. 60 *of* 1904-05.

Appellant	*Versus*	Respondent
Gopal Rao		Aswathanarnappa, minor, by guardian Annaiyappa

Subject.

Appeal against the decree of the Deputy Commissioner of the Kolar District, affirming that of the Assistant Commissioner, dismissing the suit filed by the appellant to establish his hak to the shanbhogi office of, and the shanbhogi Inam lands attached to, Bhaktaravalli village in the Sidlaghatta Taluk, and recognising the hak of the respondent thereto.

Facts of the case.

One Gopal Rao was the original registered shanbhog of the village in question as well as of some other villages. He had two wives, Savitramma and Ammannemma. The appellant is the grandson (son's son) of the former, and the respondent is the latter's daughter's son. In 1879-80, Gopal Rao executed a will bequeathing to his second wife the shanbhogi office of the village in question and the Inam lands attached thereto, along with some property, and to his son Krishna Rao (by the 1st wife) the remaining property as well as the shanbhogi office of some other villages. It was also stipulated in the will that the shanbhogi office and the property assigned to his 2nd wife should go after her death to her daughter. In 1881 Krishna Rao also executed a karar agreeing to act according to his deceased father's will. On the death of Krishna Rao in 1896, his son the appellant claimed the registry of the shanbhogi of all the villages for himself while Ammannemma objected thereto and claimed that the shanbhogi baraward of Bhaktaravalli village should be made out in her name. The Assistant Commissioner thereupon ordered in August 1898 the registry of all the villages in the name of the appellant and referring Ammannemma to a regular suit for the establishment of her claim. On her appeal the Deputy Commissioner set aside the Assistant Commissioner's order and directed on the 2nd August 1899, the registry of Bhaktaravalli shanbhogi in her name on the ground that she was in possession of the office for several years according to the will and karar above referred to. On her death the appellant again agitated his claim, but the Deputy Commissioner on the 28th June 1901, ordered the registry of the shanbhogi office in question in the respondent's name on the grounds that Ammannemma was the rightful hakdar according to the order of the previous Deputy Commissioner and that the respondent was her nearest heir. The appeal preferred to Government by the appellant against the above order was rejected by Government in their Order No. Pet. 1598, dated the 20th February 1902, on the grounds that there was a division of the shanbhogi hak and properties by consent of parties so far back as 1881, that under the arrangement the shanbhogi office of the village in question had come into the possession of Ammannemma and been in her enjoyment throughout her life-time and that the appellant's father was also a consenting party to the will of his father. The appellant thereupon filed a regular suit to establish his hak in the Court of the Assistant Commissioner who, after going into the merits of the case, rejected the suit, and his decree was upheld by the Deputy Commissioner on appeal. Hence the present appeal to Government.

Decision.

This is a case relating to a shanbhogi office. It came before Government in 1902 and was decided adversely to the appellant. That decision was final and conclusive and could not be controverted by a suit. The party aggrieved, however, instituted a suit which, instead of being thrown out, was entertained by the Assistant Commissioner, who, after going into the merits of the case, passed an unfavorable decision, which, on appeal, was concurred in, and upheld by the Deputy Commissioner.

Government hold that the suit was not maintainable and should have been dismissed as soon as filed. All further proceedings not being in accordance with law, the appeal must fail and is rejected.

No. R. 7557—*Mis* 244-04-4, *dated Bangalore, 24th February* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Kolar District, together with the vernacular records received with his docket No. 2101-208, dated the 12th October 1904.

Appeal No. 51 *of* 1904-05.

Appellants	*Versus*	Respondents
1. Venkatappa		1. Shanbhog Puttanniah
2. Krishnappa		2. Ramanna *bin* Nanjiah
3. Venkatramiah		3. Venkatramiah *bin* Gundu Rao
4. Subbaraya		4. Ganthada Krishnappa

Subject.

Appeal against the order of the Deputy Commissioner of the Hassan District, confirming the sale of the appellants' lands for arrears of Jodi due on the whole village of Gubbi in the Hole-Narsipur Taluk.

The facts of the case appear sufficiently clear from the following :-

Decision.

The jodi village of Gubbi consists of a large number of Vrittis. In addition to the lands held direct by the Vrittidars, there is in it some Madhayaka land from which they, as a body, are entitled to recover certain dues from the occupants thereof. The village was some ten years ago attached and taken under Government management under Section 165 of the Land Revenue Regulation. Certain Madhayaka lands in the possession of the appellants have now been sold, not on account of arrears (in kind or cash or both) due to the Vrittidars in respect thereof, but on account of the heavy arrears due to Government by the whole village. This action is irregular and cannot be supported. By their assumption of the management of the village, Government have entitled themselves "to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof" (*vide* Section 166 of the Land Revenue Regulation). In other words, Government are entitled to manage the village and to enforce the payment of all moneys due to the owner of the village, *i. e.*, the Vrittidars by persons holding lands under them. The persons last mentioned are not liable to be proceeded against except to the extent of their own liability to the Vrittidars. The lands in the village seem to have been provisionally settled in 1902. The assessment then fixed cannot be given retrospective effect to. How the Amildar and the Deputy Commissioner make out that Rs. 983-3-10 represent the arrears due by the appellants, is by no means clear. The appellants seem to contend that there is no arrear outstanding against them.

2. While rejecting the appellants' contention that the lands in question which were at one time Madhayaka lands have, by an arrangement between themselves and the Vrittidars, since ceased to be such, Government hold that the procedure adopted by the local authorities was not warranted by law, that the sale held on account of the arrears due *to Government by the Vrittidars*, instead of on that of the arrears due *to the Vrittidars by the appellants*, is unsustainable and must be set aside, and that the Deputy Commissioner should proceed *de novo* after ascertaining the exact extent of the appellants' liability as the holders of Madhayaka lands in question.

3. The Deputy Commissioner's order is reversed and he is directed to take further action in accordance with the foregoing observations.

No. R. 8661—*Mis.* 233-03-5, *dated Bangalore, 15th March* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Hassan District together with the records received with his letter No. 230, dated the 30th October 1904.

Appeal No. 86 *of* 1904-05.

Appellant	*Versus*	Respondent
Munisonnegowda		Shanbhog Ramappa.

Subject.

Claim to the pateli office of the Sirkar village of Motnahalli, Kolar Taluk.

The facts of the case are sufficiently clear from the following :—

Decision.

The village of Motnahalli consisted of Sirkar and Jodi villages of the same name, each in charge of a separate patel. In 1891 the last hakdar patel of the Sirkar village resigned his office and the patel of the Jodi village, *viz.*, the respondent's brother was appointed officiator of the Sirkar village as well as of the Jodi village. The respondent succeeded his brother after the latter's death. The appellant claimed the pateli office for the first time in 1901 as a cousin of the late hakdar. Government hold that after the hereditary office was resigned by the hakdar it would be at their absolute disposal and that they were at liberty to appoint whomsoever they considered competent. The Sirkar village has ceased to exist as an independent village, having been absorbed in the Jodi village during the Survey Settlement, and the necessity for a separate patel no longer exists. The appellant's claim is untenable and the Government direct that the Deputy Commissioner's order be confirmed and the appeal rejected.

No. R. 9908—*Mis.* 280-04-4, *dated Bangalore, 10th April* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Kolar District, together with the records received with his letter No. 2842—277, dated the 24th November 1904.

Review Application No. 25 *of* 1904-05.

Petitioner	*Versus*	Counter-petitioner
Srinivasamurtiachar.		Venkatramanachar

Subject.

Application for review of the order of Government, *viz.*, Muzrai Rubkari No. 739, dated the 17th September 1903, approving of the transfer of the Baraward of one-third share in the Brindavana puja huk at Tirumakudlu in the T.-Narsipur Taluk from the name of the last Barawardar Kaveeramma to that of her brother, the counter-petitioner.

2. The facts of the case appear sufficiently from the following decision :—

Decision.

(1) Venkatramanachar.
(2) Dikshitachar.
(3) Kempachar.
(4) Hambi Narasimhachar.

The Brindavana puja in question was being originally performed by four hissedars by rotation for three months each in the one year, of them (Kempachar) died issueless and his share was enjoyed by the remaining three who attended to the service for four months each. Of these, Hambi Narasimhachar transferred his huk to his sister's son Venkatasubbachar and on the latter's death his widow (Bhagamma) succeeded. She in her turn transferred her share to her deceased husband's brother (Venkata Narasimhachar *alias* Dabbannachar) who also died leaving a son. The boy did not survive the registry of the office long. His mother Kaveeramma (widow of Dabbannachar) next succeeded to the office. Thus the service passed into the possession of a strange family and had been in its enjoyment for more than twenty years. Kaveeramma, the last Barawardar, sought permission to appoint her brother, the counter-petitioner, to the office though he is already enjoying a share in it as the grandson of Dikshitachar, one of the four original hissedars. The Deputy Commissioner in his Rubkari No. 18, dated the 4th September 1903, recommended the transfer of Baraward from the name of Kaveeramma to that of the counter-petitioner and Government in their Order Muzrai Rubkari No. 739, dated the 17th September 1903, approved of the transfer. The petitioner who is a member of the family of Venkatramanachar, first of the original four hissedars mentioned above, applies for a review of the above order of Government praying that the third share enjoyed by Kaveeramma be distributed between the members of the family of the first two original hissedars.

2. Government observe on further consideration that an hereditary office such as the one in dispute should not have been allowed to be alienated to a different family as was done in this case, while there were other hukdars enjoying the office, and they cannot perpetuate the mistake once committed by permitting its repetition. It is premature to consider who should be the successor to Kaveeramma until the office becomes vacant. The petitioner however can have no manner of right to the office at this distance of time. In these circumstances Government direct that the registry of the Baraward should remain in the name of Kaveeramma and that the petitioner's claim be rejected.

No. 3867, *dated Bangalore, 19th April* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Mysore District, together with the vernacular records received with his letter No. 74, dated the 2nd September 1904.

Appeal No. 72 *of* 1902-03.

Appellant	*Versus*	Respondent
Gopala Rao, shanbhog of Mushtur village, Chikballapur Taluk.		Narnappa.

Subject.

Appeal against the order of the Deputy Commissioner, Kolar District, declining to interfere with the Civil Court sale of Survey No. 8 of Mushtur village in the Chikballapur Taluk.

The facts of the case appear sufficiently from the following :—

Decision.

The land in question is a service, *i.e.*, shanbhogi inam land. So far back as 1834 it was mortgaged to one Honnu Reddi by the then holder of the office of shanbhog. The land has since changed hands by division, Civil Court sale, etc. The appellant is the present occupant of the office. By purchase from the persons concerned he recently obtained possession of five-eighths of the land and also acquired the right of redeeming the other three-eighths from the respondent. He subsequently sued the respondent for the redemption of the mortgage and obtained a decree against him. He nevertheless now asks for restitution free of payment. This prayer is manifestly inadmissible. The alienation in this case was made prior to the date of the Chief Commissioner's Notification of the 9th September 1835 and is therefore not affected by that Notification, *vide* para 4 of the Chief Commissioner's General Circular No. 5 of 1872-73 which provides that the rule concerning the inalienability of service inams "will not be held to have retrospective effect, so as in any wise to injure the interests of incumbents or holders of mirasi lands which may have come into their possession by sale, gift or otherwise previous to the Notification issued from this office on the 9th September 1835." The appellant's own conduct as well as the rules in force clearly shows that he is not entitled to the relief which was once refused him in 1891 and which he has now again asked for.

2. The Deputy Commissioner's order is accordingly affirmed and this appeal dismissed.

Memo No. R. 10167—*Mis.* 142-02-8, *dated Bangalore, the* 19*th April* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Kolar District, together with the records received with his letter No. 3474-349, dated the 2nd January 1905.

Appeal No. 93 *of* 1904-05.

Appellant—Kalegowda.

Subject.

Appeal against the order of the Deputy Commissioner, Hassan District, directing that for realization of the arrears of revenue on Survey No. 71 of Nilkunda village, Arkalgud Taluk, the appellant's other property should be proceeded against.

The facts of the case appear sufficiently from the following :—

Decision.

Survey No. 71 of Nilkunda was declared forfeited for an arrear of assessment due thereon for the year 1897-98. The action subsequently taken proved infructuous and the land was accordingly, after certain protracted proceedings, resumed to Government. For the recovery of the said arrear and also for the assessment which accrued due on the land during the pendency of the above proceedings, the Deputy Commissioner directed that action be taken against some other land in the appellant's khate situate in another village (Chikkabemmatti). Hence the appeal. Government are of opinion that the Deputy Commissioner's order is erroneous and must be set aside. The appellant's liability is limited only to the arrear which necessitated the forfeiture above referred to. If that arrear is paid up by him, his other property ought not be proceeded against. It has not been shown that the appellant was in possession and enjoyment of Survey No. 71 notwithstanding its forfeiture. On the contrary, it would appear that the land had passed out of his hands by private alienation, some time before the date of the declaration of forfeiture. That being so, it is clear that he has a valid grievance.

Under these circumstances, Government direct that further proceedings against the appellant be dropped in case he pays up the arrear for which the forfeiture in question was ordered, *i.e.*, the assessment due for the year 1897-98.

No. R. 10183—*Mis.* 544-04-2, *dated Bangalore, the* 19*th April* 1905.

Copy of the above is forwarded to the Revenue Commissioner in Mysore, together with the records received with his letter No. 5077, dated the 20th December 1904.

Appeal No. 44 *of* 1904-05.

Appellant	*Versus*	Respondents
Chennappa		1. Lakshminarasappa 2. Srinivasa Rao (since dead).

Subject.

Appeal against the order of the Deputy Commissioner of the Kolar District, decreeing the payment of miras by the appellant to the 1st respondent.

The facts of the case appear sufficiently clear from the following :—

Decision.

This is a case of some importance, and Government have given it their best consideration.

2. The plaintiff (first respondent) is the shanbhog-gumasta of the Inam village of Hemaralahalli in the Sidlaghatta Taluk. The Barawarddar-shanbhog is the second respondent, who has only a nominal interest in these proceedings, and who therefore supports the plaintiff's claim. The appellant (defendant) is a raiyat occupying certain lands in the village.

3. The plaintiff sued for the recovery of certain miras alleged to be due to him by the defendant. The Assistant Commissioner who tried the suit, decreed the claim which, in appeal, was slightly modified by the Deputy Commissioner.

4. Before Government, the defendant raises several objections, the chief of which affects the very right of the plaintiff to institute the suit, and will accordingly be first considered.

5. No privity of contract between the parties has been established. Nor has there been on their part such a long and uninterrupted course of conduct as could be taken to be indicative of the existence of any contractual relation between them. The evidence is conflicting and inconclusive, and will therefore be dismissed as unworthy of consideration.

6. The shanbhog of an unsettled Inam village is no doubt entitled to the same remuneration as that enjoyed by the shanbhog of a similar Sirkar village, the rates being determined by the rules in force or by usage. The question, however, is to whom he should look for payment, to the raiyats direct or to the Inamdar concerned ? In this matter, Government are not prepared to hold that any direct right exists in the shanbhog, or any direct obligation attaches to the raiyats. The question is one of master and servant, and it naturally follows that the latter can only claim his remuneration from the former and not from his tenants in the absence of any contract or custom to the contrary, neither of which latter has been satisfactorily made out in the present case. Whether the Inamdar would be entitled to claim reimbursement from his raiyats after meeting the shanbhog's claim, is a point which does not call for determination in this case. That the Inamdar is required by law to keep and render certain accounts, that in order to enable him to do so, he is expected to employ an accountant, and that in case of default, Government can get the accounts prepared at his cost,—all this is foreign to this litigation and cannot influence the decision of Government in regard to the maintainability or otherwise of this suit.

7. In this view, it seems to Government unnecessary to deal with the other questions raised in the appeal.

8. In the result, Government hold that the plaintiff (respondent) has no right of action against the defendant (appellant). The appeal is consequently allowed, and the decree complained of reversed.

Memo. No. R. 10978—*Mis.* 316-04-2, *dated Bangalore, the 6th May* 1904.

Copy of the above is forwarded to the Revenue Commissioner in Mysore, together with the records received with his letter No. 2432, dated the 14th September 1904.

Appeal No. 65 *of* 1904-05.

Appellant	*Versus*	Respondent
Hanumantha Rao		Krishnappa.

Subject.

Appeal against the order of the Deputy Commissioner of the Tumkur District affirming the order of the Assistant Commissioner referring the respondent and the appellant respectively to establish or disprove in a Civil Court the validity of the alleged adoption of the respondent to the last office-holder Kusamma, before allowing either of them to claim the shanbhogi office of Jalodu firka in the Pavagada Taluk.

Order.

The factum and validity of two adoptions are in question, namely, of the respondent Krishnappa by Kusamma, the last holder of the office, and of the appellant Hanumantha Rao by Kusamma's brother-in-law Dodda Ramappa. The effect of the karar of 1883 on the claims of these two persons is also a point for consideration. Neither of these two questions has been adjudicated upon either by the Assistant Commissioner or by the Deputy Commissioner. A reference to the Civil Court was not a proper order to make in the case. The questions at issue should be determined and decided by the authorities below to the best of their judgment, leaving it to the party aggrieved to prefer an appeal to Government, if so disposed. The order directing the succession to be kept open pending either party obtaining and producing a Civil Court decision cannot be supported and must be set aside. The case will be remanded for disposal on merits.

No. R. 12805—*Mis.* 206-04-4, *dated Bangalore, the* 22*nd June* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the vernacular records received with his docket No. 318, dated the 11th November 1904.

Referred Case No. 8 *of* 1903-04.

Parties heard.

1. Lakshminarasappa, 2. Mahadeva Rao, 3. Lakshminaranappa, 4. Hettakki Gundappa and 5. Kasaba Appajappa.

Subject.

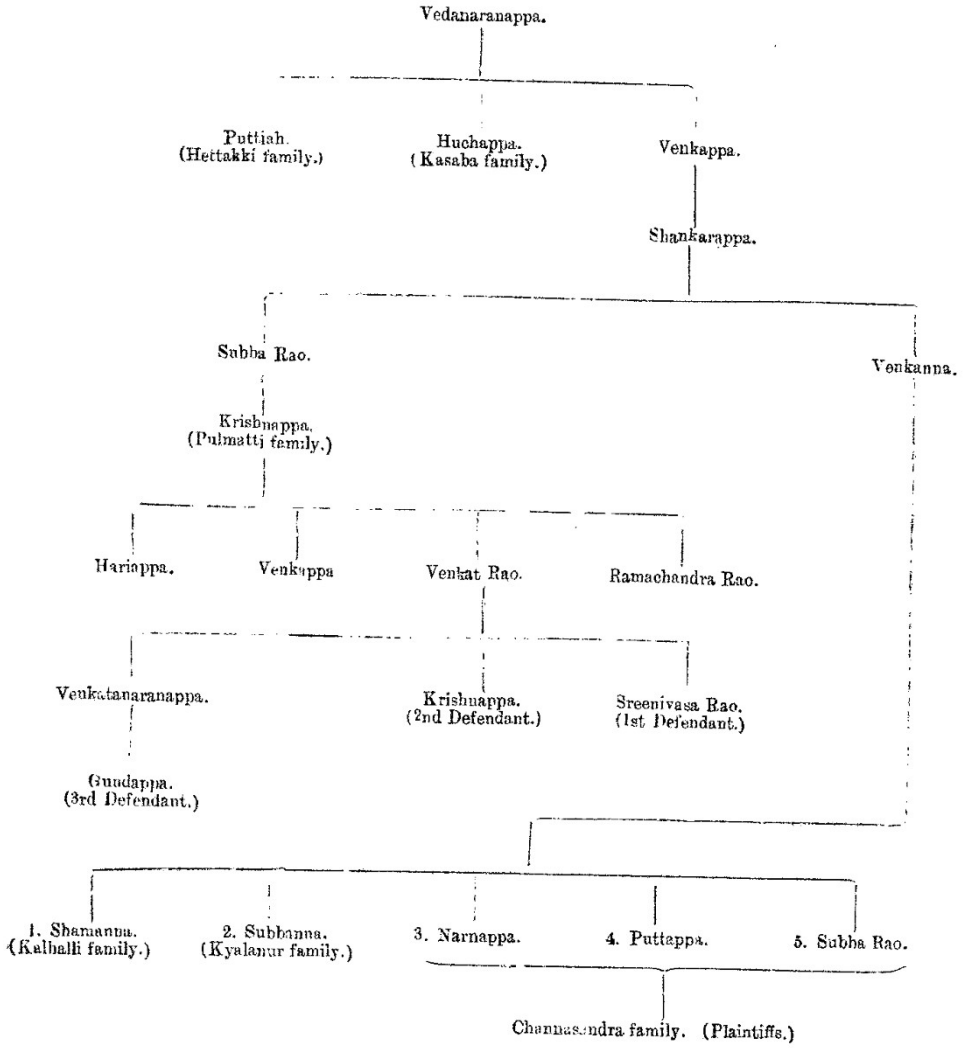
Partition of the Inam villages of Mittanahalli, Gollahalli and Venkatapur in the Sidlaghatta Taluk, among the several members of the Desakulkarni and other families of Jangamkota, Sidlaghatta Taluk.

The facts of the case appear sufficiently clear from the following decision :—

Decision.

The Desakulkarnis of Jangamkota, Sidlaghatta Taluk, are descended from one Vedanaranappa who had three sons named Puttiah, Hutchappa and Venkappa. Two separate families designated the Hettakki and Kasaba families have sprung from the first two sons of Vedanarnappa. The descendants of the third son Venkappa have branched off into several families known as Pulmatti, Kyalanur, Kalhalli, Channasandra, &c.

For a proper understanding of the case, the following genealogical tree would be of some use :—



2. The office of Desakulkarni was formerly a hereditary one intervening between the shanbhog and the Amildar in matters connected with Revenue administration. To the Desakulkarni office of Jangamkota, were attached as service Inams the three villages of Mittanahalli, Gollahalli and Venkatapura.

3. The descendants of Vedanaranappa's third son Venkappa aforesaid figure in the early litigations connected with the villages above mentioned. Venkappa's son Shankarappa had two sons named Subba Rao and Venkanna Subba Rao had a son named Krishnappa who left four sons, namely, Hariappa, Venkappa, Venkata Rao and Ramachandra Rao. Venkanna left five sons named Shamanna, Subbanna, Naranappa, Puttappa and Subba Rao.

4. By an order of the Commissioner of Mysore passed in 1834, Venkat Rao, one of the four sons of Krishnappa, became the officiator Desakulkarni.

5. In the year 1838, the last three sons of Venkanna aforesaid, namely, Naranappa, Puttappa and Subba Rao (referred to as representing the Channasandra family) instituted a suit in the Court of the Huzur Adalat against the descendants of Venkat Rao, one of the sons of Krishnappa aforesaid of the Pulmatti family, for the recovery of their share in the Desakulkarni villages and other immoveable property and in the mesne profits thereof. Neither the two brothers of the plaintiffs nor the three brothers of Venkata Rao or their descendants, nor the representatives of Puttiah of the Hettakki family or of Huchappa of the Kasaba family, were made parties to that suit. The proceedings taken, however, embraced other interests than the shares merely of the three plaintiffs as explained below.

6. The defendants urged that they alone were entitled to hold the office and enjoy the Inams. In their rejoinder, however, they stated that in accordance with customary procedure, the plaintiffs had called on the 1st defendant and, after inspecting the references in his possession, got the accounts relating to their share in the income of the villages as well as in the expenses pertaining to the office, settled up to four years prior to the suit, and that as regards the accounts of the remaining four years, if the plaintiffs agreed to abide by the practice observed by the numerous gnatis, they (the defendants) were prepared in respect to the plaintiffs to act in accordance with practice.

7. The Judges of the Court were of opinion that the documents filed, showed that the whole of the gnatis were entitled to enjoy the Inams attached to the office of Desakulkarni, and they directed in their decision dated the 28th July 1842, that the 1st defendant, Sreenivasa Rao, who was looking after the duties of Desakulkarni, should be allowed a monthly pay of 10 K. pagodas and contingencies and that the plaintiffs should receive from the defendants their share in the mirasi and other income minus their quota of the expenditure. The Commissioner of Mysore on appeal affirmed the decision of the Adalat Court on the 5th June 1843, and in so doing observed in the recital of his order that the decision of the said Court was to the effect that the rents and produce of the village of Venkatapur equally with those of the other Inam villages should be divided (or shall be distributable) among all the Hissedars in the Inam, and that the first defendant as the Duftardar (officiator) should in future be empowered to deduct from the income derived from the Inam the expenses relating to the Dufter not exceeding 10 K. pagodas per mensem.

8. In 1846, the Huzur Adalat addressed a Yadi to the Commissioner regarding the best mode of carrying the above decree of the Commissioner into effect. The Commissioner thereupon desired the Superintendent of the Bangalore Division in conformity with the recommendation of the Court to appoint an impartial person on an adequate salary to take charge of the villages which formed the estate, and to collect, and pay over to the several shareholders of the Jangamkota Kulkarni Miras, the rents accruing therefrom. In conveying these instructions to the Superintendent of the Bangalore Division, the Commissioner observed as follows :— "The Judges have been requested to furnish you with a list of shareholders and of the shares to which they are entitled, and you will be pleased to issue to the Mutsaddi whom you may appoint such directions from time to time as may be required to guide him in managing the property fairly."

9. Thereupon, a gumasta appointed by the Amildar with the concurrence of the Superintendent assumed the management of the villages, and the mesne profits were disbursed to the parties concerned at the Taluk Cutcherry. The list of shareholders and shares furnished by the Court is not forthcoming, but a list of the disbursements made in Raktakshi (1864-65) and referred to in the Inam Register of 1875, gives the names of parties or families entitled to payment and the number of shares payable to each, as follows :—

(1) *In Mittarahalli village*—

Defendant Gundappa's shares	5
Plaintiffs' (Channasandra family's) shares	3
Kalhalli people's share	1
Kyalanur " "	1
Hettakki " "	10
Kasaba " "	10
	30

(2) *In Gollahalli village*—

Plaintiffs' (Channasandra people's) shares	3
Defendants' shares	5
Kyalanur people's share	1
Kalhalli	1
	10%

(3) *In Venkatapur village*—

Plaintiffs' shares	3
Defendants' "	7
	10

10. It is reported that payments were made properly up to the year Raktakshi (1864-65) and in subsequent disputes the list of that year is shown to have been relied upon by both the contending parties. There is thus sufficient ground for the belief that the distribution of shares as above was started and continued on the lines laid down by the Court.

11. It would appear that though the shares of four other families than the plaintiffs and defendants' were recorded as above in the lists of disbursement, payments were, as a matter of fact, made to the defendants in respect of those shares in addition to their own. This led to the members of the defendants' family claiming to exclude those four families from participating in the profits of the villages, and this contention was fully dealt with at the Inam Settlement in 1875.

12. The Superintendent of Inam Settlements made the following order on the 23rd July 1875 :—" The settlement of this taluk has been going on for three years and I and the Assistant have been encamped here for three weeks, and the claimants to shares have had ample time and opportunity to arm themselves with ll the requisite documents and proofs. All disputes which are not proved and settled at the next hearing on the 7th proximo to be referred to the Civil Courts as the Assistant cannot delay in the taluk and has to proceed to Anekal."

13. The Inam Assistant completed his enquiry and passed orders in regard to the Mittanahalli village on the 9th August 1875. He found that the marginally noted persons had shares in the village, and accordingly recorded their names and shares in the Settlement Register. In so doing, he followed the Huttuvali Patta or disbursement list of Raktakshi (1864-65), and it is seen that the shares as ascertained and recorded by him correspond with those noted in the list as shown below :—

1. Venkat Rao 1/60
2. Mahadeva Rao (Pulmatti) 1/24
3. Krishna Rao, Devanhalli 1/24
4. Sreenivasa Rao, Sidlaghatta 1/48
5. Subbanna, Jangamkota 1/48
6. Gundappa, Chintamani 1/24
7. Mahadeva Rao 1/60
8. Aswathanarnappa, Bangalore 1/30
9. Byata Rao, Hassan 1/60
10. Srinivasa Rao, Kyalanur 1/60
11. Chidananda Rao, 1/60
12. Vyasanna, Jangamkota, 1/3
13. Kasaba Naranappa ⅓
14. Gopala Rao, Bairnahalli 1/60
15. Subbanna, 1/30

Total ... 30

I. (a) *According to the list*—

Defendant Gundappa's shares, *i. e.*, as admitted by Gundappa, the shares common to himself and the other descendants of his grandfather Krishnappa=5 out of 30.

(b) *According to the Settlement Register*—

No. 2 Pulmatti Mahadeva (taken as representing the full share of his grandfather Hariappa, the 1st son of Krishnappa)=1/24

No. 3 Krishna Rao (taken as representing the full share of his great grandfather Venkappa, 2nd son of Krishnappa)=1/24.

No. 6 Gundappa (taken as representing the full share of Venkat Rao, 3rd son of Krishnappa) = 1/24.

Nos. 4 and 5 Sreenivasa Rao and Subbanna (taken as representing the share of Ramachandra Rao, another son of Krishnappa)=1/48 each, both together=1/24.

Total =4/24=1/6=5 out of 30.

II. (a) *According to the list*—

Plaintiffs', Channasandra people's shares (Plaintiffs being Narnappa, Puttappa and Subba Rao, sons of Venkanna)=3 out of 30.

(b) *According to the Settlement Register*—

No. 1 Venkata Rao, Jangamkota, representing half the share of Puttappa=1/60.
No. 7 Mahadeva Rao, representing the other half share of Puttappa=1/60.
No. 8 Aswatha Narnappa, representing the full share of Subba Rao=1/30.
No. 9 Byatta Rao, representing half the share of Narnappa=1/60.
No. 10 Sreenivasa Rao, representing the other half share of Narnappa=1/60.

Total=3/30 or 3 out of 30.

II. (a) *According to the list.*—

Kyalanur people's share=1 out of 30.

(b) *According to the Settlement Register.*—

No. 11 Chidananda Rao, and
No. 14 Gopal Rao, each 1/60; both together 2/60 or 1 out of 30.

IV. (a) *According to the list*—

Kalhalli people's share=1 out of 30.

(b) *According to the Settlement Register.*—

No. 15 Subbanna=1/30 or 1 out of 30.

V. (a) *According to the list.*—

Hettakki people's shares=10 out of 30.

(b) *According to the Settlement Register.*—

No. 12 Vyasanna=⅓ or 10 out of 30.

VI. (a) *According to the list.*—

Kasaba people's shares=10 out of 30.

(b) *According to the Settlement Register.*—

No. 13 Kasaba Narnappa=1/30 or 10 out of 30.

14. The parties that appeared before the Inam Assistant Superintendent, the contentions raised, and the reasons for the decision arrived at, will appear from the subjoined extract from the Assistant Superintendent's order :—

"On the 7th instant at 2 P. M., one man came, and about 3 P. M., four others dropped in. A petition was received from four others to say that they have funeral ceremonies to perform and that they want a week's time to attend this office. I made enquiries till the close of the day, and not a single man's share was uncontested, and yet no reasonable evidence would be adduced by any present. I had no alternative but to adjourn the enquiry to this day, when every one promised to bring all the evidence in his favor. They appeared to-day at about 1 P. M., and all appeal to the "Huttuvali Patti" drawn up in 1864 by the Government gumasta appointed to manage the whole of the Desakulkarni property in dispute. In this Patti (copies produced by Gundappa No. 6, and the opposite party of Chidananda Rao, No. 11 represented by Sivanapura Mahadeva Rao, and Venkatappa. and admitted to be correct by all parties) this village is divided into thirty shares, out of which three are allotted to the Channasandra party, *i. e.*, Nos. 1, 6, 7, 8, 9 and 10, and 27 to Gundappa No. 6 which later allotment is particularized as follows :—

Gundappa's own share	5
Kyalanur (Nos. 11 to 14)	1
Kalhalli (No. 15)	1
Kasaba (No. 13)	10
Hettakki (No. 12)	10

and the amount due on account of these twenty-seven shares is shown as paid to No. 6, together with 15 pagodas 8 fanams from the three shares of Channasandra party, and a remark is entered opposite these two items *on account of Desakulkarni Service* (due from the sharers). Hence it is quite clear that although Gundappa enjoyed the twenty-two shares of other parties, he did so only on account of the service rendered by him as alleged by them, which having now ceased, the shares must revert to the owners; and I have accordingly registered their names. In regard to the five shares shown as No. 63 own, he admits that they are equally divided among himself and Nos. 2, 3, 4 and 5, and I have therefore registered their names ; but No. 2 contends that he should not only get a share in the five shares shown as No. 6's but also in other twenty-two shares which he enjoys besides : but No. 2 cannot prove his right, while No. 6 produces the 3rd Assistant Superintendent's (Bangalore District) Order No. 863, dated the 19th November 1868, which, though not quite specific, declares that No. 2 could have no part except in the shares inherited by No. 6 and No. 6 contends that the other twenty-two shares did not come to his family by inheritance, but from "other causes," and these "other causes" are clearly on account of service rendered on behalf of the men who owned these twenty-two shares.

"Except Nos. 2 and 6, none of the sharers present, nor of those absent, as far as I could ascertain, raise the slightest dispute to the shares I have recorded, which have been furnished by No. 1, one of the chief men of this large family and belonging to a party whose right is acknowledged by all the other parties and who may be considered neutral. All present have also signed the settlement in proof of their consent.

"Nos. 2 and 6 appeal to several Civil Court decrees, but although they have had ample time and repeated warnings, they have none to produce now."

15. As regards the Golhalli village, the Assistant Superintendent of Inams accepted the Huttuvali or disbursement register of 1864 and recorded shares as noted below :—

1. Venkata Rao } Each 1—20, and both together 1—10, representing the share of Puttappa one of the plaintiffs.
2. Madhava Rao }
3. Byata Rao } Each 1—20, and both together 1—10, representing the share of Narnappa one of the plaintiffs.
4. Srinivasa Rao }
5. Aswathanarnappa. } 1—10 representing the share of Subba Rao, the other plaintiff.

Total three shares out of ten accorded to plaintiffs, Channasandra people, in the Huttuvali list.

6. Mahadeva Rao ... 1—8 representing the share of Hariappa, a son of Krishnappa.
7. Krishna Rao ... 1—8 representing the share of Venkatappa, another son of Krishnappa.
8. Srinivasa Rao } Each 1—16, both together 1—8 representing the share of Ramachandra Rao, another son of Krishnappa.
9. Subbanna }
10. Gundappa ... 1—8 representing the share of Venkata Rao, another son of Krishnappa.

Total 4—8 or 5 out of ten shares accorded to defendants in the list.

11. Chidananda Rao } Each 1—20, both together 1—10, representing the one share out of ten accorded to Kyalanur people in the list.
12. Gopal Rao }
13. Subbanna ... 1—10 representing the one share out of ten accorded to Kalhalli people in the list.

16. As regards the Venkatapur village, the Huttuvali list gave shares only to the plaintiffs and defendants, namely three to the former and seven to the latter, and none to Kyalanur or Kalhalli people. The Inam Assistant thought that the list was incorrect in this respect as there was a difference of two shares between the entries on the Receipt side and those on the Disbursement side, and he therefore held that the Kyalanur and Kalhalli families should each have a share in this village also, in the same way as they had in the Golhalli village according to the Huttuvali list. He accordingly recorded shares in respect of thirteen persons inclusive of three representing the Kyalanur and Kalhalli families as noted above in regard to Golhalli; but on revision the Superintendent of Inam Settlements struck off the shares allotted to Nos. 11, 12 and 13, *i. e.*, to the Kyalanur and Kalhalli peoples, and added their 2—10 to the share entered against Gundappa, No. 10. Thus, it will be seen that the distribution of shares in Venkatapur was also made to accord with the allotments in the Huttuvali list.

17. In 1884, the Deputy Commissioner, Kolar, to which district the villages in question had in the meantime been transferred, reported to Government that the gumasta appointed for the management of the villages had absconded and he therefore solicited instructions as to the action to be taken. In reply he was informed that the arrangements ordered in 1846 should be enforced by the appointment of a Receiver who might be required to furnish security to the extent considered necessary, and that if all concerned agreed, one of the shareholders themselves might be appointed as Receiver. The Deputy Commissioner in 1886 replied that the shareholders did not agree to one of themselves being made a Receiver, that there were numerous disputes among them regarding their respective shares, which could not be satisfactorily settled in the Revenue Department, that the villages might be surveyed and settled and the net profit after deducting the charges of establishment, be kept in deposit and disbursed to the shareholders on their producing decrees of Civil Courts specifying their respective shares.

18. The Dewan heard the case on 26th July 1887 at Hosakota. Mahadeva Rao (No. 2 in the Settlement Register of Mittanahalli) and the representatives of Pulmatti, Hettakki and Kasaba families were present at the hearing, and Mahadeva Rao gave a list of shares excluding the Hettakki, the Kasaba, the Kyalanur and the Kalhalli families from any share in the three villages, allowing three shares in each of the villages to the plaintiffs or the Channasandra family, and claiming all the rest, *viz.*, twenty-seven shares in Mittanahalli and seven shares in Golhalli and Venkatapur for the descendants of the four sons of Krishnappa, to wit, Hariappa, Venkappa, Venkata Rao and Ramachandra Rao. After referring to the records of the case and the Settlement Registers, the Dewan passed the Order of Government No. 2475-91, dated the 29th July 1887, a reconsideration of which is now sought.

19. The order of Government referred to the enfranchisement of the villages at the Inam Settlement and the existence of disputes among the members of the family, some of these forming the subject of subsequent decrees, private partition deeds, and executive orders of Government; and stated that it was undesirable that Government should continue to manage the estate any longer, that the lands of the villages should be divided among the various members of the family, in the first instance according to the shares (specified) of the sons of Krishnappa and the sons of Venkanna, as well as those of the Hettakki and Kasaba branches, and that any disputes between the parties as to what particular shares (apparently blocks of land) should be allotted to a particular member should be decided by lottery. The shares specified are :—

	Mittanahalli out of 120 parts	Golhalli out of 120 parts	Venkatapur out of 120 parts
Hettakki Branch	40	...	...
Kasaba Branch	40	...	...
Sons of Krishnappa—			
1. Hariappa	5	15	21
2. Venkappa	5	15	21
3. Venkata Rao	5	15	21
4. Ramachandra Rao	5	15	21
Sons of Venkanna—			
1. Shamanna	4	12	...
2. Subbanna	4	12	...
3. Naranappa	4	12	12
4. Puttappa	4	12	12
5. Subba Rao	4	12	12

20. The order thus disallowed the contention of Mahadeva Rao that only the descendants of Krishnappa and those of Nos. 3, 4 and 5 of the sons of Venkanna were entitled to shares in the villages. It is in perfect accord with the Huttuvali list of 1864, the expression "Defendant" and "Defendant Gundappa" in the latter being taken as representing the whole family of Krishnappa, in regard to which there is no dispute. It further agrees with the allotments made in the Inam Settlement Register in respect of the Mittanahalli and Gollahalli villages, the individuals named in the register from among the progeny of Krishnappa, being taken as

representing those sons of Krishnappa from whom they were descended. As regards Venkatapur, it agrees with the revised order in the Settlement Register in excluding Shamanna and Subbanna (Kyalanur and Kalhalli families) from a share in the village, but differs from it as to the distribution of the shares so set free among members of the Defendant-family, the order dividing those shares (twenty-four out of 120) among the four sons of Krishnappa while the Settlement Register records the whole (two out of ten) to the representative of one of those sons, namely Venkata Rao. But this difference is not of any consequence inasmuch as in regard to the village no objection is taken to distribution of shares in accordance with the order by the parties concerned, and the Deputy Commissioner has ordered its partition in the manner laid down in the order. Thus the order of Government followed the undisputed Huttuvali list of 1864 and the accepted adjudication of claims and shares in the Inam Settlement; and in restricting division in the first instance to the established shares of the headmen of the several branches through whom the numerous members of the family claimed sub-shares, it apparently aimed at minimizing difficulties in carrying it into effect.

21. In 1890, Mahadeva Rao and others applied for a review of the order of 1887, but the application was rejected by Government.

22. In the meantime, the Assistant Commissioner, Kolar, ascertained the names and addresses of all the surviving members of the different branches of the family and issued notices to them communicating full particulars of the decision of Government and stating that within two months from the date of the service of notice, the shareholders should by mutual agreement divide the lands of the villages among themselves and report the division so made in detail to him, failing which the lands of the villages would be surveyed and broken up into numbers corresponding in extent to the shares of the respective shareholders and such numbers would be treated as minor Inams and added to the neighbouring villages as directed in the Government Order. In November 1891, the Assistant Commissioner reported that out of ninety-two members then in the family, seventy-eight were served by delivery of the notices, and fourteen by the affixing of the notices in the Chavadi of Jangamkota, and that only three of them had submitted petitions objecting to the execution of the order, *viz.*, one (Mahadeva Rao) asking that the right of only those who were receiving payments up to the action taken by the Amildar on the absconding of the Government gumasta in 1886 might be recognized and two praying that the villages be given back to the possession of Gundappa from whom they were taken over by Government. Eight others petitioned that the order of Government might be duly executed, and the remaining eighty-one remained quiescent. The Deputy Commissioner reported to Government that the prayer for the restoration of the villages to Gundappa was inadmissible, and that the villages would be broken up and the shares distributed by lottery. The Government intimated in June 1892 that measures should be adopted for the survey of the villages and their subdivision into shares and absorption as Minor Inams in the neighbouring villages as directed in the order. The Deputy Commissioner reported in August 1898 that the survey of the villages had been completed and that the Survey Records with Fysal Patrak, etc., had been sent to the Survey Department.

23. Further action to give effect to the remaining portion of the order does not appear to have been taken. In the course of the proceedings taken upon a petition presented by a representative of the Hettakki family in 1900 complaining that his share of the income of the villages had not been paid to him, the Deputy Commissioner instituted enquiries in November 1902 as to why mesne profits were distributed contrary to the order of Government and why a proper division of the lands had not been made. The detailed report submitted by the Assistant Commissioner in June 1903, shows that there were objections again to the claim of the Hettakki, Kasaba, Kyalanur and Kalhalli families to a share in the villages of Mittanahalli and Golhalli being recognized, that the local authorities were led to institute fresh enquiries and to apply for fresh orders, and that as there was no dispute in regard to the Venkatapur village, the Amildar was directed to effect the division of that village according to the respective shares of the Hissedars. The Deputy Commissioner, in submitting the report to the Revenue Commissioner, proposes that the villages of Mittanahalli and Golhalli be divided among those in actual possession and enjoyment of shares in mesne profits and that the parties aggrieved be left to establish their claims in a competent Court. The Revenue Commissioner in agreeing to this proposal observes that the Government order appears to conflict with the decree of the Court and with actual possession and enjoyment for over forty years in accordance therewith.

24. From the fact narrated above, there is no warrant for the supposition that the decree of the Adalat Court as affirmed by the Commissioner's Court awarded shares only to the Channasandra family (the three plaintiffs in the suit) and the sons of Krishnappa (the family represented by the defendants). On the other hand the decrees read with the letter addressed to the Superintendent of the Bangalore Division in 1846 show that the Courts recognized the claim "of the several share-holders of the Jangamkota Kulkarni Miras" to the rents of the villages which form the estate, while it is clear from the Huttuvali list of 1864 that the Hettakki, Kasaba, Kyalanur, and Kalhalli branches were among the several shareholders of the Jangamkota Kulkarni Mirasi.

25. Nor it is correct to say that the Channasandra party and the sons of Krishnappa had alone possession and enjoyment of the shares *in pursuance of* the decrees for over forty years. If there was any such possession and enjoyment to the exclusion of the other families referred

to, it was not in conformity with the arrangement ordered by the Commissioner on the recommendation of the Court. As regards the period during which such possession is said to have continued, two important facts appear to have been overlooked, *viz* :—

(1) the finding at the Inam Settlement in 1875 that the receipt by the defendants' family of the shares of the families now sought to be excluded was not in virtue of any right in that family, but in consideration of its performing the duties of the office; and the recognition and record of the shares of the second mentioned families following from such finding, and

(2) the mesne profits in the possession of the person appointed to manage the villages, and of the Amildar to whom they appear to have been transferred, were, so to speak, in trust for the several shareholders of the Jangamkota Kulkarni Miras; and the receipt by the defendants' family of a larger share than was due to it, was, very probably, as alleged in some of the reports, rendered possible by the collusion of that family with the person who had charge of the management of the villages.

26. On the whole, the order of Government, while recognizing rights established by previous decisions, aimed, in a practical manner, at putting an end to disputes among the rival branches of the Kulkarni family, and thereby facilitate the adjustment of the claims of the members of each branch. In other words the order, except in one particular, is based upon the Inam Settlement which is in accordance with the Huttuvali list, which in its turn gave effect to the order of the Commissioner charging the Revenue authorities with the execution of the decree of the Adalat Court as interpreted and affirmed by the decree of his own Court. The only exception above referred to is that the order directs the partition of the lands by metes and bounds without special authority in that behalf from the Court or authority whose decree and order for the collection of rents and produce and the distribution thereof among the shareholders, it professes to execute. The original arrangement was limited to the nomination of a mutsaddi to collect and distribute the rents and profits and to the exercising of supervision over him, but in course of time the moneys collected came to be lodged in, and distributed from the Taluk Treasury, and the villages came to be viewed as being under Government management after the enfranchisement of the Inam, and when the misconduct of the mutsaddi and the disputes of the shareholders were brought to notice, Government considered some better and more satisfactory arrangement than that originally made under the Court's authority was desirable. Hence the above mentioned direction, which, however, is open to the objection that it goes beyond the instructions under which the Revenue authorities became seized of the subject matter of the litigation. However unsatisfactory the original arrangement might have been, an executing authority had no power to vary it without due sanction. In this respect, therefore, the order of 1887 has to be modified. In every other respect, it is perfectly valid and needs no reconsideration. The shares have been rightly determined and laid down and all that remains to be done, so long as the authority in pursuance of which the Revenue Officers are acting continues to be what it is, is to revert to the old arrangement of management by a paid agent and of the division of net profits among all the shareholders concerned as detailed above, in preference to an actual partition of the lands as directed by the order.

No. R. 114—*Mis. P. F.* 229-03-2, *dated Bangalore, the 6th July* 1905.

Copy of the above is forwarded to the Revenue Commissioner in Mysore, together with the vernacular records received with his letter No. 4250, dated the 17th February 1904.

Appeal No. 126 *of* 1904-05.

Appellants	*Versus*	Respondents
Savitramma		Subbanna.

Cross Appeal.

Subbanna	*Versus*	Savitramma.

Subject.

Appeals against the order of the Deputy Commissioner of the Tumkur District, directing that Subbanna, the present shanbhog of Maidala Amanikere in the Tumkur Taluk, should pay to Savitramma, wife of Narasimhappa, Rs. 24 annually for her maintenance from 1904-05, out of the potgi attached to the shanbhogi office in question. The latter (Savitramma) prays for enhanced maintenance and for payment retrospectively from 1887, while the former (Subbanna) prays for being exempted from the liability to pay any maintenance at all.

The facts of the case appear sufficiently from the following:—

Decision.

One Narasimhappa was the shanbhog of Maidala Amanikere of the Tumkur Taluk. He was dismissed in 1887 on account of his having embezzled Government money. His close relations were excluded and a remote one, *viz.*, one Subbanna, appointed as his successor. In making this appointment the then Deputy Commissioner expressed a hope that Subbanna would

give Narasimhappa's wife Savitramma a small maintenance allowance out of the potgi in case the latter should not be taken back and supported by her husband. On this point a report was called for. Subbanna made a statement that, in the eventuality abovementioned, he would pay the woman Rs. 24 a year. No orders, however, were passed. Savitramma did not move in the matter until sixteen years afterwards, *i. e.*, until December 1903, when she applied for the first time for an order directing Subbanna to give her an allowance. Subbanna agreed to give her Rs. 24 with effect from 1904-05. The Deputy Commissioner made an order accordingly. Hence these two appeals, one from Savitramma contending that she should be given an enhanced allowance with retrospective effect, and the other from Subbanna repudiating his liability to make any payment at all and alleging that his consent was due to a misapprehension. Under the potgi rules, the potgi allowance is the officiators exclusive perquisite, being his remuneration for the duties he is required to perform. It is both inalienable and indivisible. Official sanction and effect could not be given to any arrangement or agreement which the parties concerned might enter into in contravention of the rules. The Deputy Commissioner's order therefore cannot be supported. Subbanna's appeal is thus entitled to prevail. It follows from this that Savitramma's appeal must fail.

The Deputy Commissioner's order directing the payment of Rs. 24 per annum to Savitramma by a deduction from the potgi payable to Subbanna is accordingly set aside.

Memo No. R. 1256—*Mis.* 621-04-7, *dated Bangalore, the 27th July* 1905.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the vernacular records received with his letter No. 729, dated the 8th April 1905.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.